

**THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CONSTELLATION NEWENERGY, INC.,	:	
	:	
Plaintiff,	:	
	:	CIVIL ACTION FILE
v.	:	
	:	NO. 02-CV-2733 (HB)
POWERWEB TECHNOLOGIES, INC., <i>et al.</i> ,	:	
	:	
Defendants	:	

**ORDER**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2003, upon consideration of the Motion to Strike of Counterclaimant Powerweb Technologies, Inc., and the Response of Counterclaim Defendant RETX, Inc. thereto, it is hereby **ORDERED** that the Motion to Strike is **DENIED**.

BY THE COURT:

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The Honorable Harvey Bartle, III  
United States District Judge

**THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

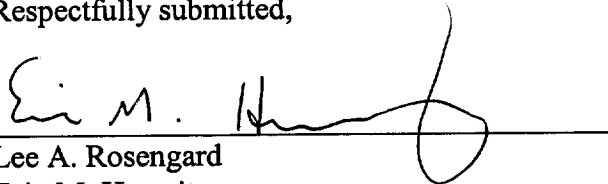
<b>CONSTELLATION NEWENERGY, INC.,</b>	:	
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<b>Plaintiff,</b>	:	
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<b>v.</b>	:	
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<b>POWERWEB TECHNOLOGIES, INC., et al.,</b>	:	
	:	
<b>Defendants</b>	:	

**RESPONSE OF COUNTERCLAIM DEFENDANT RETX, INC.  
TO MOTION TO STRIKE OF  
COUNTERCLAIMANT POWERWEB TECHNOLOGIES, INC.**

Counterclaim Defendant RETX, Inc. ("RETX"), by its undersigned counsel, hereby submits this Response to the Motion to Strike of Counterclaimant Powerweb Technologies, Inc. ("Powerweb"), in which Powerweb moved to strike the affidavit of Peter C. Scarpelli and Section II.A. of the Reply Memorandum filed by RETX in support of its Motion to Dismiss. Contrary to Powerweb's suggestion, RETX is not improperly arguing the merits of Powerweb's claims and did not instruct Mr. Scarpelli not to answer deposition questions concerning matters addressed in his affidavit.

This Response is supported by the accompanying Memorandum of Law.

Respectfully submitted,



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**MEMORANDUM OF LAW IN SUPPORT OF  
RESPONSE OF COUNTERCLAIM DEFENDANT RETX, INC.  
TO MOTION TO STRIKE OF  
COUNTERCLAIMANT POWERWEB TECHNOLOGIES, INC.**

**I. INTRODUCTION**

The Court should deny Powerweb's Motion to Strike the affidavit of Peter Scarpelli ("Mr. Scarpelli") and Section II.A of RETX's Reply Memorandum. In its Motion, Powerweb argues that (i) RETX is improperly arguing the merits of Powerweb's claims and (ii) Powerweb cannot adequately respond to RETX's arguments (and the supporting affidavit of Mr. Scarpelli) because counsel for RETX instructed Mr. Scarpelli not to answer deposition questions concerning matters addressed in his affidavit. Neither assertion is true. First, the facts presented in the Scarpelli affidavit go to the jurisdictional issues presently before the Court. That those same facts may also go to the merits of the dispute is beside the point. Second, counsel for RETX did not instruct Mr. Scarpelli not to answer questions concerning the facts properly at issue here, including questions concerning the Confidentiality Agreement as alleged by Powerweb.

## II. ARGUMENT

Whether the Confidentiality Agreement alleged by Powerweb exists and (if it does) related matters such as the identity and residency of the parties to that agreement, where that a greement was made, and what law governs it, are matters properly at issue on RETX's Motion to Dismiss for lack of personal jurisdiction. Tellingly, Powerweb does not list any such facts among RETX's alleged contacts with Pennsylvania. The absence of such an agreement, or its lack of relation to Pennsylvania, is evidence of RETX's lack of contact with Pennsylvania. Thus, RETX appropriately has offered the affidavit testimony of Mr. Scarpelli that he was never asked to, nor did he, enter into a confidentiality agreement with Powerweb, and that he did not receive confidential information pursuant to such an agreement.

Powerweb argues that RETX is inappropriately arguing the merits of Poweweb's claims and that Powerweb cannot respond to those issues because counsel for RETX "aggressively thwart[ed] discovery that conceivably may have touched upon the merits of Powerweb's claims" by instructing Mr. Scarpelli not to answer "a foundation question regarding whether he knew about the existence of a confidentiality agreement between AES NewEnergy and Powerweb." See Powerweb's July 23, 2003 Memorandum of Law at, pp. 1-2. That simply is not so. To the contrary, the facts established by Mr. Scarpelli's affidavit and the portion of RETX's argument based on those (and other) facts are properly before the Court on the present Motion to Dismiss. Further, counsel for RETX objected only to overbroad merits discovery and did not object when counsel for Powerweb and Defendant CILCO questioned Mr. Scarpelli at length about the relationship (including any confidentiality agreements) between Powerweb or Mr. Budike, on the one hand, and CILCO, RETX or Mr. Scarpelli, on the other hand. Counsel

for Powerweb and CILCO also questioned Mr. Scarpelli about the information he received for Powerweb, also without objection from counsel for RETX.

Contrary to Powerweb's claim, counsel for RETX did not instruct Mr. Scarpelli not to answer "a foundation question regarding whether he knew about the existence of a confidentiality agreement between AES NewEnergy and Powerweb." See Powerweb's July 23, 2003 Memorandum of Law, at p. 2. The question to which counsel for RETX objected was a vague and overbroad question going to the merits: "Q. Did Mr. Budike mention to you that he had some sort of arrangement with AES NewEnergy?" See Deposition of Peter Scarpelli ("Scarpelli Dep."), at 28:20-21, relevant excerpts of which are attached hereto as Exhibit "A." Given that Powerweb has described its "arrangement" with NewEnergy as "several agreements regarding the development of a joint venture, including a broad confidentiality agreement," see Powerweb's July 7, 2003 Memorandum of Law, at p. 3, the question cannot be fairly construed as a mere "foundation question" limited to "the existence of a confidentiality agreement."

Further, counsel for Powerweb and CILCO each questioned Mr. Scarpelli extensively about various contracts and/or confidentiality agreements, drawing no objection from RETX's counsel:

MS. GOODCHILD [counsel for Powerweb]: Are there any other agreements entered into between Powerweb and RETX?

MR. SCARPELLI: Confidentiality agreement, I believe.

MS. GOODCHILD: Why would they—do you know why RETX and Powerweb entered into a confidentiality agreement?

MR. SCARPELLI: We enter into confidentiality agreements as a matter of course with everyone we meet with. Not anyone, but anyone we have substantive discussions.

MS. GOODCHILD: What do you mean, "substantive discussions?"

MR. SCARPELLI: Anytime we are going to talk about our products or our services.

(Whereupon the court reporter marked Exhibit No. 13 for identification.)

MS. GOODCHILD: Mr. Scarpelli, I have handed you what has been marked as Powerweb 13, which is CDRETX1427 through 1429. Can you take a minute and look at that?

MR. SCARPELLI: Okay.

MS. GOODCHILD: Do you recognize it as the confidentiality agreement between RETX and Powerweb?

MR. SCARPELLI: I recognize that is what it says.

MS. GOODCHILD: Do you have any reason to believe that there is a different confidentiality agreement?

MR. SCARPELLI: No.

\* \* \*

MS. BAIO [counsel for CILCO]: Did you, while you were employed with CILCO, enter into any contractual relationship with Mr. Budike or with Powerweb?

MR. SCARPELLI: I don't believe so.

\* \* \*

MS. BAIO: You talked earlier about the confidentiality agreement that exists between RETX and Powerweb now. Was there any confidentiality agreement that you are aware of during your tenure at CILCO between CILCO and Powerweb?

MR. SCARPELLI: First of all, I'm not sure if you said "now" with the confidentiality agreement. I'm not sure if it is still in force. I don't know what the time period is.

MS. BAIO: Okay, that's fine.

\* \* \*

MS. GOODCHILD: When you were at CILCO, was there a similar policy about entering into confidentiality agreements with anyone you had discussions with?

MR. SCARPELLI: I don't know what the corporate policy was. I don't recall what the corporate policy was.

MS. GOODCHILD: How about in practice?

MR. SCARPELLI: In practice we would do confidentiality agreements, yes.

MS. GOODCHILD: Do you recall having any discussions—strike that. IN the two conversations you had with—strike that. Did you ever make plans to meet with Mr. Budike while you were at CILCO?

MR. SCARPELLI: I don't think so.

MS. GOODCHILD: All right. That is it.

Scarpelli Dep., Ex. A at 78:16-79:17; 89:10-13; 91:11-20; 92:6-21. These excerpts show that Powerweb had ample and repeated opportunities to ask Mr. Scarpelli about any confidentiality agreements – completely uninterrupted by RETX's counsel.

Further, that counsel for Powerweb pursued these lines of questioning in a deposition limited to jurisdictional issues is a tacit admission that these matters are properly at issue on the present motion to dismiss. Indeed, in its papers, Powerweb includes factual allegations and argument concerning these same matters. For example, Powerweb argues that RETX's "specific activities within Pennsylvania show that RETX aimed its tortious conduct with respect to the *theft of Powerweb's confidential technology; subsequent unfair competition; and interference with Powerweb's prospective business in Pennsylvania...*" See Powerweb's July 7, 2003 Memorandum of Law, at p. 10 (emphasis added). Powerweb now hypocritically complains that RETX unfairly argued about the merits of Powerweb's claims because RETX has pointed out in its Reply that Powerweb's case is based on unsubstantiated allegations. RETX's inclusion of references to Mr. Scarpelli's affidavit in its Reply Memorandum are provided to rebut the specific allegations of Powerweb in its Response to the Motion to Dismiss that RETX was subject to personal jurisdiction because it had intentionally aimed its conduct at the Commonwealth of Pennsylvania through Mr. Scarpelli's alleged misappropriation of Powerweb's confidential information. It would be manifestly unfair to say that RETX could not

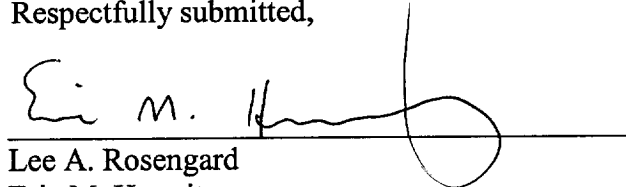


respond to these allegations because Powerweb now construes the Reply as arguments about the “merits” of the case.

### III. CONCLUSION

For all the foregoing reasons, RETX respectfully requests that this Court deny Powerweb’s Motion to Strike the affidavit of Peter A. Scarpelli and Section II.A. of the Reply Memorandum filed by RETX in support of its Motion to Dismiss.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Eric M. Hurwitz", is written over a horizontal line.

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Co-Attorneys for Counterclaim Defendant  
RETX, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that on August 11, 2003, I caused a copy of the foregoing Response of Counterclaim Defendant RETX, Inc. to Motion to Strike of Counterclaimant Powerweb Technologies, Inc. to be served by U.S. mail, first class, postage prepaid, to the following:

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Philadelphia, Pennsylvania 19102

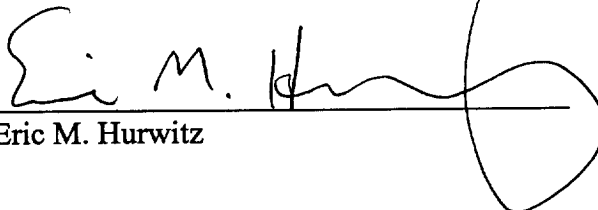
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Eric M. Hurwitz

## EXHIBIT A

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CONSTELLATION NEWENERGY, INC.,	)	
	)	
Plaintiff,	)	CIVIL ACTION FILE
	)	
vs.	)	NO. 02-CV-2733 (HB)
	)	
POWERWEB TECHNOLOGIES, INC.,	)	
et al.,	)	
	)	
Defendants.	)	

- - -

Deposition of PETER CHRISTIAN SCARPELLI,  
taken on behalf of Powerweb Technologies, Inc.,  
pursuant to agreement of counsel, in accordance  
with the Federal Rules of Civil Procedure, before  
Kathleen J. Sherwood, Certified Court Reporter,  
at Morris, Manning & Martin, LLP, 1600 Atlanta  
Financial Center, 3343 Peachtree Road, N.E.,  
Atlanta, Georgia, on the 19th day of June, 2003,  
commencing at the hour of 10:43 a.m.

- - -

REGENCY-BRENTANO, INC.  
Suite 140  
13 Corporate Square  
Atlanta, Georgia 30329  
(404) 321-3333

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1 MS. SCOTT: You are going to have to start  
2 being a little more specific, because otherwise I think  
3 we are going to waste the entire day objecting and  
4 going back and forth as to whether merit discovery is  
5 being taken.  
6 Q. (By Ms. Goodchild) Did there come a time  
7 where you learned that Powerweb was located in  
8 Pennsylvania?  
9 A. Sure.  
10 Q. And do you recall when that was?  
11 A. No.  
12 Q. Did you request Powerweb and you material?  
13 A. No.  
14 Q. Did Powerweb send you material?  
15 A. Yes.  
16 Q. Were you expecting those materials?  
17 A. Yes.  
18 Q. And why were you expecting those materials?  
19 MS. SCOTT: I am going to object. You are  
20 getting into merit discovery.  
21 MS. GOODCHILD: Are you directing him not to  
22 answer?  
23 MS. SCOTT: I'm going to direct him not to  
24 answer anything that deals with merit discovery, yes.  
25 The judge's order was very clear. And we may even want

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1 to mark that and put that in, too, as an exhibit as to  
2 what can be discussed and what we are dealing with  
3 here. We are only dealing with jurisdiction.  
4 Actually, it's probably not necessary to  
5 mark. Everybody has seen the judge's order.  
6 MS. GOODCHILD: I don't think we need to  
7 mark it. I think this is just a point where there is  
8 overlap. I see it differently than you see it, and  
9 that's fine.  
10 Can we mark this as 2.  
11 (Whereupon, the court reporter  
12 marked Exhibit No. 2 for  
13 identification.)  
14 Q. (By Ms. Goodchild) Mr. Scarpelli, you have  
15 in front of you what has been marked as Powerweb 2, a  
16 document numbered BKT3398 to 399. Can you take a  
17 minute and just look that over. Do you recall  
18 receiving this letter?  
19 A. Yes.  
20 Q. Were there things attached to this letter?

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1 A. Yes.  
2 Q. And when did you talk to Mr. Bedlike?  
3 A. I don't know. Sometime after the letter. I  
4 don't recall. Probably within ten days.  
5 Q. Is there a reason that you say "probably  
6 within ten days"?  
7 A. No.  
8 Q. And how many times did you talk to  
9 Mr. Bedlike?  
10 A. When?  
11 Q. In early 2000, while you were employed by  
12 CILCO.  
13 A. I believe twice.  
14 Q. What was the topic of those conversations?  
15 A. He was trying to sell a system.  
16 Q. Tell me what you mean by that.  
17 A. It was a function of his sales process. He  
18 was trying to explain to me what they were doing and  
19 thought that it might be interesting for us.  
20 Q. Did Mr. Bedlike mention to you that he had  
21 some sort of arrangement with AES NewEnergy?  
22 MS. SCOTT: Objection.  
23 MS. BAJO: Objection.  
24 MS. SCOTT: Merit. Goes to merits. Has  
25 nothing to do with jurisdiction.

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1 Q. (By Ms. Goodchild) Unless she directs you  
2 not to answer, you can answer.  
3 MS. SCOTT: Don't answer.  
4 MS. GOODCHILD: Let's go off the record for  
5 a minute.  
6 (Whereupon, a discussion was held off the  
7 record.)  
8 Q. (By Ms. Goodchild) Mr. Scarpelli, did you  
9 ever send anything to Mr. Bedlike?  
10 A. I don't remember. Assuming, of course, you  
11 are talking about that time frame.  
12 Q. Yeah. Let me just back up. For right now,  
13 this is the time you were employed by CILCO.  
14 Did you have any discussions with Mr. Bedlike  
15 about entering into any agreements?  
16 A. With whom? Him?  
17 Q. With Powerweb.  
18 A. Sure.  
19 Q. And when did you have those discussions?  
20 A. Probably during one of those two - probably

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- 1 Q. And when did you first contact them?  
 2 A. I never first contacted them.  
 3 Q. When did you have a first contact with them?  
 4 A. About 14 months ago.  
 5 Q. How many contacts have you had with them?  
 6 A. I don't recall.  
 7 Q. They have been by telephone?  
 8 A. Yes.  
 9 Q. Have you ever met them?  
 10 A. Personally? I don't think so.  
 11 Q. And what is the purpose of your contact?  
 12 A. They were trying to do business in New  
 13 England.  
 14 Q. Let's go back for a minute to early 2000  
 15 when you -- let me back up. Let's go back to when you  
 16 first met or talked to Mr. Budike.  
 17 A. Okay.  
 18 Q. Was that early 2000?  
 19 A. According to the letter, it was sometime in  
 20 February.  
 21 Q. Okay. You testified you had two phone  
 22 conversations with him around that time, is that  
 23 correct?  
 24 A. While employed by CILCO?  
 25 Q. Mm-hmm.

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- 1 Mr. Budike?  
 2 A. Certainly.  
 3 Q. When you visit Pennsylvania, do you call  
 4 Mr. Budike?  
 5 A. I have only been there twice, and it was  
 6 with him. We saw him both times, I believe.  
 7 Q. And why have you maintained contact with  
 8 Mr. Budike?  
 9 A. He is fun to talk to.  
 10 Q. He is just a good guy?  
 11 A. If that is a character statement, I'm not  
 12 sure I -- I don't know.  
 13 Q. Any other reason?  
 14 A. We had business discussions.  
 15 Q. And what were those business discussions?  
 16 A. I believe that there were two types, two  
 17 categories.  
 18 Q. And what were they?  
 19 A. We entertained discussions on possible  
 20 mergers and as a first step towards going toward that  
 21 merger process. I think we entertained a discussion of  
 22 meter-installation services. I also believe actually  
 23 that he attempted to sell his software system to us at  
 24 RETX.  
 25 Q. Has RETX entered into any agreements with

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- 1 A. Approximately, to the best of my  
 2 recollection, there were two.  
 3 Q. How many times did you speak to Mr. Budike  
 4 after you left CILCO?  
 5 A. I haven't the foggiest idea.  
 6 Q. Was it more than once?  
 7 A. Absolutely.  
 8 Q. More than twice?  
 9 A. Absolutely.  
 10 Q. Can you give me an estimate?  
 11 A. Less than 50.  
 12 Q. Were these phone conversations?  
 13 A. Some.  
 14 Q. How else did you communicate with  
 15 Mr. Budike?  
 16 A. As you indicated, we had a meeting in  
 17 Pennsylvania with them and -- with Lou and PJM  
 18 Technologies.  
 19 I think he and I also met at a restaurant  
 20 outside of D.C. I think it was outside the BWI Airport  
 21 as a matter of fact. I think I was staying at a  
 22 Marriott. He drove down to meet me there.  
 23 He has also met with us in our office here  
 24 in Atlanta on, I believe, two occasions.  
 25 Q. Have you e-mailed back and forth with

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- 1 Powerweb?  
 2 A. I was informed yesterday that we did.  
 3 Q. Who told you that?  
 4 A. Rick Tabin.  
 5 Q. I'm sorry?  
 6 A. Rick Tabin.  
 7 Q. And who is Mr. Tabin?  
 8 A. Vice president of operations at RETX.  
 9 Q. And why did Mr. Tabin tell you that?  
 10 A. Because I asked him.  
 11 Q. And why did you ask him?  
 12 A. Because -- I didn't know.  
 13 Q. Why were you interested?  
 14 A. We were preparing for the deposition, or I  
 15 was preparing for the deposition, with my attorney.  
 16 Q. What else did Mr. Tabin tell you?  
 17 A. He told me that we -- well, presuming you  
 18 are talking about in the context of this conversation I  
 19 had with them on the telephone yesterday afternoon.  
 20 Q. If that is when you had the conversation in  
 21 which he told you.  
 22 A. Because I talked to Rick on numerous times  
 23 throughout the last several years. But during that  
 24 discussion there were essentially two salient issues.  
 25 One was that the contract had been executed, and the

20 (Pages 74 to 77)

REGENCY-BRENTANO, INC.

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1 MS. SCOTT: Just send a reminder letter, and  
2 we take a look at it and decide.  
3 Q. (By Ms. Goodchild) Was anyone else at that  
4 meeting with Ms. Baio and Ms. Scott?  
5 A. Yes.  
6 Q. Who else was there?  
7 A. Mr. Broderick.  
8 Q. Did you look at documents during that  
9 meeting?  
10 A. I think so.  
11 Q. Did you look at documents that we looked at  
12 today?  
13 A. Yes.  
14 Q. Do you know whether the documents you looked  
15 at have been produced?  
16 A. I don't know if I can answer that question.  
17 MS. SCOTT: Are you asking me?  
18 THE WITNESS: I am asking you.  
19 MS. SCOTT: Are you asking me have the  
20 documents that he looked at been produced?  
21 MS. GOODCHILD: No. I am asking him whether  
22 he knows whether or not they have been produced.  
23 THE WITNESS: That is a legal thing. I'm  
24 not sure what the definition of "produced" means.  
25 Could you restate the question?

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1 Q. (By Ms. Goodchild) Do you know whether the  
2 documents that you reviewed have been produced?  
3 MS. BAIO: I believe the question has been  
4 asked and answered, and he said he didn't know what  
5 "produced" meant.  
6 THE WITNESS: That's true.  
7 Q. (By Ms. Goodchild) Did they have numbers on  
8 the bottom of them?  
9 A. Probably.  
10 Q. When you were at CILCO, did you have any  
11 other contact with Pennsylvania other than the couple  
12 of conversations with Mr. Budlike?  
13 A. I don't believe so.  
14 Q. Did you ever visit Pennsylvania when you  
15 worked at CILCO?  
16 A. I don't believe so.  
17 MS. GOODCHILD: I think I am done. Give me  
18 one minute.  
19 MS. SCOTT: Okay.  
20 (Whereupon, a recess was taken from 1:29 to  
21 1:33 p.m.)  
22 MS. GOODCHILD: I think we are done.  
23 THE WITNESS: Thank you.  
24 DIRECT EXAMINATION  
25 BY MS. BAIO:

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1 Q. I have a couple of followup questions, and I  
2 will try not to keep you, Mr. Scarpelli. Going back to  
3 the period of time that you were employed at CILCO,  
4 were you ever a vice president?  
5 A. No.  
6 Q. Did you ever have an e-mail address at  
7 NewEnergy?  
8 A. Not to my knowledge.  
9 Q. Were you ever employed by NewEnergy?  
10 A. No.  
11 Q. Regarding your conversation or conversations  
12 with Mr. Budlike in or about February of 2000, you  
13 testified that you received one or two calls from him  
14 in that time period.  
15 A. What was the time period?  
16 Q. I am sorry. In or about February of 2000.  
17 A. Yes.  
18 Q. Could you tell us how long in duration those  
19 calls were?  
20 A. Oh, gosh. I don't know. Probably less than  
21 30 minutes.  
22 Q. Would you characterize -- you spoke earlier  
23 about conversations you had with Powerweb since your  
24 employ with RETX, and we talked about the difference  
25 between discussions and negotiations. How would you

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1 characterize your discussions with Mr. Budlike while you  
2 were employed about CILCO?  
3 A. Sales pitch.  
4 Q. It was a sales pitch you were receiving from  
5 Mr. Budlike?  
6 A. Yes.  
7 Q. Did you give any serious consideration to  
8 that sales pitch?  
9 A. No.  
10 Q. Did you, while you were employed with CILCO,  
11 enter into any contractual relationship with Mr. Budlike  
12 or with Powerweb?  
13 A. I don't believe so.  
14 MS. GOODCHILD: "You" being Mr. Scarpelli  
15 individually?  
16 MS. BAIO: Well, on his own behalf or as an  
17 employee of CILCO.  
18 THE WITNESS: I still don't believe so.  
19 Q. (By Ms. Baio) We also identified as  
20 Powerweb Exhibit Number 2 a February 7, 2000, letter  
21 which you received from Mr. Budlike. Do you recall that  
22 letter?  
23 A. I do.  
24 Q. Okay. Did you ask Mr. Budlike or Powerweb to  
25 send that letter to you?

23 (Pages 86 to 89)

REGENCY-BRENTANO, INC.

<p>Page 90</p> <p>1 A. No.</p> <p>2 Q. Okay. Did he send you anything else?</p> <p>3 A. Other than the letter itself?</p> <p>4 Q. Yes.</p> <p>5 A. I believe there was a brochure attached to</p> <p>6 the letter or submitted with the letter.</p> <p>7 Q. Okay. Can we mark this as 14.</p> <p>8 (Whereupon, the court reporter</p> <p>9 marked Exhibit No. 14 for</p> <p>10 identification.)</p> <p>11 Q. Now, I realize that this is a photocopy, but</p> <p>12 does this look like the brochure that was included with</p> <p>13 Mr. Badlike's letter of February 7, 2000?</p> <p>14 A. Yes.</p> <p>15 Q. Did you receive anything else from</p> <p>16 Mr. Badlike at that time?</p> <p>17 A. Not to my recollection.</p> <p>18 Q. Did you ask Mr. Badlike or Powerweb to</p> <p>19 forward anything else to you while you were employed by</p> <p>20 CILCO?</p> <p>21 A. I don't think so.</p> <p>22 Q. Did you ever send anything to Mr. Badlike or</p> <p>23 Powerweb while you were employed by CILCO?</p> <p>24 A. I don't recall.</p> <p>25 Q. Did you ever receive any written proposal</p>	<p>Page 92</p> <p>1 A. Well, with people, sure, but not with</p> <p>2 Powerweb.</p> <p>3 Q. Not with Powerweb.</p> <p>4 MS. BAJO: I don't have any other questions.</p> <p>5 CROSS-EXAMINATION</p> <p>6 BY MS. GOODCHILD:</p> <p>7 Q. I just have one followup. If you can just</p> <p>8 go back to Exhibit 2.</p> <p>9 MS. SCOTT: Can you let him borrow yours?</p> <p>10 Can you still ask your question if he has it?</p> <p>11 MS. GOODCHILD: Yeah.</p> <p>12 Q. (By Ms. Goodchild) If you look at the</p> <p>13 second-to-the-last paragraph there --</p> <p>14 A. Yes.</p> <p>15 Q. -- Mr. Badlike says he has taken the liberty</p> <p>16 of forwarding to you an automated tour of how the</p> <p>17 Omni-Link system would operate for Bell Atlantic.</p> <p>18 A. Yes.</p> <p>19 Q. Does that refresh your recollection as to</p> <p>20 whether or not you got anything else besides the</p> <p>21 Exhibit 14?</p> <p>22 A. It does not.</p> <p>23 Q. Do you recall getting any automated tour?</p> <p>24 A. No.</p> <p>25 Q. Do you recall receiving any CDs?</p>
<p>Page 91</p> <p>1 from Mr. Badlike or from Powerweb while you were</p> <p>2 employed by CILCO?</p> <p>3 A. I don't think so.</p> <p>4 Q. Did you ever send any written proposals to</p> <p>5 them while you were employed by CILCO?</p> <p>6 A. I don't think so. I don't recall.</p> <p>7 Q. Did you ever offer to sell goods or services</p> <p>8 to Mr. Badlike or to Powerweb while you were employed by</p> <p>9 CILCO?</p> <p>10 A. No.</p> <p>11 Q. You talked earlier about the confidentiality</p> <p>12 agreement that exists between RETX and Powerweb now.</p> <p>13 Was there any confidentiality agreement that you are</p> <p>14 aware of during your tenure at CILCO between CILCO and</p> <p>15 Powerweb?</p> <p>16 A. First of all, I'm not sure if you said "now"</p> <p>17 with the confidentiality agreement. I'm not sure if it</p> <p>18 is still in force. I don't know what the time period</p> <p>19 is.</p> <p>20 Q. Okay. That's fine.</p> <p>21 A. But you had asked earlier if I had executed</p>	<p>Page 93</p> <p>1 A. No.</p> <p>2 Q. Did you ever send any materials back to</p> <p>3 Powerweb?</p> <p>4 A. As I just said to counsel, I don't believe</p> <p>5 so.</p> <p>6 Q. When you were at CILCO, was there a similar</p> <p>7 policy about conferring into confidentiality agreements</p> <p>8 with anyone you had discussions with?</p> <p>9 A. I don't know what the corporate policy was.</p> <p>10 I don't recall what the corporate policy was.</p> <p>11 Q. How about in practice?</p> <p>12 A. In practice we would do confidentiality</p> <p>13 agreements, yes.</p> <p>14 Q. Do you recall having any discussions --</p> <p>15 strike that.</p> <p>16 In the two conversations you had with --</p> <p>17 strike that.</p> <p>18 Did you ever make plans to meet with</p> <p>19 Mr. Badlike while you were at CILCO?</p> <p>20 A. I don't believe so.</p> <p>21 MS. GOODCHILD: All right. That is it.</p>